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To

Subject Quality Review Team comments - Willow Blvd/A-site

Shari,

As discussed, a Quality Review Team (made up of representatives across the Remediation and Redevelopment Division) was held August 2, 2006 on the draft Willow Blvd/A-site ROD. This e-mail is in followup to our conversation right after that QRT was held. At the conclusion of this e-mail is suggested language you might want to use for the ROD itself, but I have also sent the specific citations if you'd like to use them instead. In the interest of the time constraints you are under, these final thoughts are being e-mailed rather than sent via letter. Similarly, I have cut and paste sections from Part 201 or it's rules directly into this document to make it easier for you to use and incorporate in the ROD as appropriate.

These comments are in addition to the letter that has already been finalized and signed by Keith Krawczyk. Please add this e-mail to the state's already-sent comments and include as part of the Administrative Record for this Superfund site.

Part 201 has been identified as an ARAR but certain rules just enacted December 2002 deserve special mention in the ROD.

First is the financial assurance mechanism requirement. Here is the issue as it appears in Rule 532(11)(l) and (m) in Part 201:

(11) A RAP shall include the following, if relevant to the facility and conditions addressed by the RAP. If any of the following elements or conditions is not relevant to the facility, then the RAP shall briefly state why the element is not relevant:

(l) If the remedial action is based on criteria allowed for under section 20120a(1)(f) to (j) or (2) of the act, then the RAP shall include an explanation of whether permanent markers are proposed to be installed to describe restricted areas of the facility and the nature of any restrictions, and the rationale for the proposal. If permanent markers are proposed, then the design and construction of the marker and the language describing the restrictions shall be included in the RAP.

(m) If the remedial action is based on criteria provided for in section 20120a(1)(f) to (j) or (2) of the act, a proposed financial assurance mechanism to cover monitoring, operation and maintenance, and other costs necessary to assure the effectiveness and integrity of the remedial action or an explanation of why a financial assurance is not proposed. The cost of activities

covered by the financial assurance mechanism shall be documented on the basis of an annual estimate of maximum costs for the activity as if they were to be conducted by a person under contract to the state. Costs shall not be based on activities being conducted by employees of the person proposing the remedial action. A financial assurance mechanism shall be provided if the cost of monitoring, operation and maintenance, and other activities necessary to assure the effectiveness and integrity are more than an average of \$2,500.00 per year in year 2001 dollars. Any adjustment in the \$2,500.00 threshold to account for inflation shall be determined in a manner that is acceptable to the department. The financial assurance mechanism shall provide sufficient funds to conduct any task for which a financial mechanism is required under this subrule, but is not required to cover an alternative remedial action in the event of remedy failure. The financial assurance mechanism shall be in an amount and form that allows the department to immediately contract for the response activities for which financial assurance is required in the event that the person conducting response activity fails to implement the required tasks. An acceptable financial assurance shall be in one of the following forms:

- (i) Letter of credit.
- (ii) Environmental escrow.
- (iii) Trust fund.
- (iv) Certificate of deposit.
- (v) Performance bond.
- (vi) Another form that is acceptable to the department and satisfies the requirements of this subrule.

The department shall make available upon request standard documents for each of the forms identified in subdivisions (i) to (v) of this subrule.

Rule 532(11)(h) from Part 201 is in regard to the easement issue we discussed:

(11) A RAP shall include the following, if relevant to the facility and conditions addressed by the RAP. If any of the following elements or conditions is not relevant to the facility, then the RAP shall briefly state why the element is not relevant:

(h) If the RAP is based on criteria other than the generic residential category under section 20120a(1)(a) of the act, then the RAP shall

provide all of
the following with respect to each recorded or readily evident easement
that

exists on property covered by the RAP:

(i) The name and address of the easement holder.

(ii) The nature of the easement, and, in particular, whether the
easement

gives exclusive rights to the property to the easement holder.

(iii) A copy of any notice that has been provided to the easement
holder

under R 299.51013(6).

(iv) Documentation that the easement holder consents to the imposition
of

any land or resource use restriction other than a local ordinance that
affects the
easement.

Essentially, Part 201's rules require, wherever a remedy does not
achieve generic residential criteria, that easements get identified as
described above. The ROD might want to alert that this level of
research should be part of the design phase to achieve compliance with
Part 201.

Rule 540(5) is in regard to the self-reporting obligation we
discussed:

(5) In addition to environmental monitoring, a monitoring plan shall
address

compliance with land or resource use restrictions and integrity of
exposure

controls in the following manner:

(a) For response activity that is intended to comply with cleanup
criteria

provided for in section 20120a(1)(a) to (e) of the act, ongoing
documentation of

compliance with land use restrictions is not required as part of the
monitoring

plan when the response activity is complete.

(b) For response activity that is intended to comply with cleanup
criteria

provided for in section 20120a(1)(f) to (j) or (2) of the act, ongoing
documentation of the integrity of any exposure control mechanisms and

compliance with land or resource use restrictions shall be prepared
and

maintained.

We believe the objectives of this ROD's remedy would fall under Rule
540(5)(b).

Shari, I'm proposing the following brief paragraph as a way to
introduce these into the ROD. Here's what I suggest:

To the extent appropriate, other requirements identified in Michigan's
Part 201 will be evaluated for incorporation into the remedy during
remedial design. These must include, at a minimum, a review to
establish whether easements exist at the Willow Blvd/A-site operable

unit as required by Rule 532(11)(h); a review of whether a permanent marker will be needed and the establishment of one of the Financial Assurance Mechanisms as required by Rule 532(11)(l) and (m); and, establishing as part of the site's operation and maintenance activities the obligation to self report continued compliance with land or resource restrictions as required by Rule 540(5).

Let me know if you have any questions Shari! Thanks.

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